

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 14986 of 2006

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1 Tripurari Sharan, son of late Bhupal Narayan, at present resident of Walmi, Brindaban Colony, Road No 3, Janipur Road, PS – Phulwarisharif, Patna

2 Smt Mira Sharan, wife of late Tripurari Sharan, Resident of Vrindavan Colony, Road No 3, Near WALMI COMPLEX, Phulwari Sharif, Patna, Bihar 801 505

3 Anju Sharan, D/o Late Tripurari Sharan, wife of Pawan Kumr Verma, Resident of Mir Tola, Ward No 7, Saharsa, Bihar 852 201.

... .. Petitioner/s

Versus

1 The State of Bihar

2 The High Court of Judicature at Patna through the Registrar General, Patna High Court, Patna

3 The Registrar General, Patna High Court, Patna

4 The District & Sessions Judge, Rohtas at Sasaram

... .. Respondent/s

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For the Petitioner/s : M/s Amarendra Nr, Sudhir Kr Raj, Deepak Kr, Advocates

For Respondents 2 to 4 : M/s Mrigank Mauli, Prince Kr Mishra, Advocates

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-11-2019

Interlocutory Application (for brevity, IA) No 7860 of 2017 has been filed seeking substitution of the original writ petitioner on account of his demise on 14.09.2017. The wife and daughter of the original petitioner have claimed substitution in place of the original writ petitioner.

2 Since the issue in the writ petition is in relation to monetary benefits, IA No 7860 of 2017 filed by the legal heirs is hereby allowed.

3 The legal heirs, as per details in the IA be substituted and incorporated in the cause title by the office.



4 Heard learned counsel for the petitioners and the respondents.

5 The admitted facts are lying in a narrow compass. The original petitioner was working as a Clerk in the Civil Courts at Sasaram. He was appointed as a Clerk on 09.05.1977. He was granted Junior Selection Grade with effect from 01.04.1986 and, thereafter, was also granted the Senior Selection Grade with effect from 02.09.1993. Since 11.06.1998, he was posted as a Sheristedar with Sub Judge I till his retirement on 30.04.2004. Post of Sheristedar was in the pay scale of Rs 5,000/- - 8,000/-.

6 It is the petitioners' contention that the original petitioner discharged the duties on the said post from 11.06.1998 till 30.04.2004. However, he has not been given pay for the said post nor he has been given benefit under the Assured Career Progression (For brevity, ACP) Scheme. It is his submission that once the original petitioner had assumed the higher post being duly qualified for the same and the Authorities have taken work for the higher post, the benefits attached to the higher post could not be denied to him on account of a harmonious construction of the provisions contained in Rules 58 and 103 of the Bihar Service Code.



7 Learned counsel representing the High Court submits that there was an adverse entry in the original petitioner's Annual Confidential Report (for brevity, ACR) in the year, 1993. That being so, his claim for promotion as Sheristedar or grant of benefits for the said post or grant of benefits under ACP should not be considered.

8 It is not disputed by the Authorities that after the alleged adverse entry in the ACR in the year 1983, the original petitioner was granted Junior Selection Grade on 01.04.1986 and Senior Selection Grade on 02.09.1993. Apart from the petitioners' contention that the original petitioner was never communicated the adverse entry, this Court would further consider that effect of the same cannot be made the basis of denying him the promotional benefits in 1998, when in between, after the adverse entry in the ACR, the original petitioner has already been granted the benefits of two ACPs on 01.04.1986 and 02.09.1993. The effect of the adverse entry in the ACR of 1993 stood washed off on account of such ACPs granted subsequent thereto. Such uncommunicated adverse entries in ACR of 1993 cannot be made the basis of denying the promotion to the original petitioner in terms of judgment of the Apex Court in the case of Sukhdev Singh -Versus- Union of India & Others, 2013 (3) PLJR 86 (SC).



9 This Court would observe that reliance placed on the judgment of the Apex Court is proper in the facts and circumstances of the instant case. The ACR entries were never communicated to the petitioner. Subsequent thereto, two promotions have been granted and, as such, there was no occasion for the original petitioner to apprehend that there was any adverse entry in any earlier ACR. That apart, Authorities have themselves taken work on the higher post of Sheristedar with effect from 11.06.1998 till 30.04.2004, i e, the date on which the original petitioner retired.

10 In the circumstances, this Court would hold that the adverse entry in the uncommunicated ACR of 1993 cannot be made the basis of depriving the original petitioner of benefits of the post of Sheristedar on which post he actually discharged his duties between 11.06.1998 to 30.04.2004. The petitioners would be entitled to such benefits or the benefits under ACP Scheme whichever is considered to be due to the original petitioner by the respondent-Authority without taking into consideration the effect of the adverse entry in ACR of 1993.

11 The Authorities should take a decision in respect of the admissible benefits excluding the effect of the adverse entry in the ACR of 1993 and communicate a decision with due and



admissible monetary benefits on account of such decision to the petitioners within a period of three months from the date of receipt/production of a copy of this order. Consequential benefits in terms of the pensionary dues should also be fixed and made available within the same time.

12 Writ petition stands dispose of.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2019
Transmission Date	NA

